

How Do We Determine COBRA Election and Payment Deadlines at the End of the COVID-19 Outbreak Period?

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QUESTION: As required, our company's group health plan has extended COBRA election and payment deadlines due to the COVID-19 emergency. How do we handle these deadlines once the outbreak period ends?

ANSWER: As you note, certain COBRA deadlines have been extended—but for no longer than one year—by disregarding (tolling) the COVID-19 “outbreak period,” which began March 1, 2020, and is set to end on July 10, 2023. Agency guidance issued in March 2023 provided examples illustrating the effect of the outbreak period's end on COBRA election and premium payment deadlines:

- *Electing COBRA.* If a participant experiences a qualifying event and is provided a COBRA election notice on or before July 10, 2023, the individual's 60-day period to elect COBRA begins to run on July 10, 2023 (making the deadline September 8, 2023). If the qualifying event occurs after July 10, 2023, there is no extension, and the 60-day period is measured from the date the COBRA election notice is provided. Although not expressly addressed, it appears that if a qualifying event occurs on or before July 10, 2023, and the COBRA election notice is provided after that date, the COBRA election deadline would be measured from the provision of the notice.
- *Paying COBRA Premiums.* The guidance provides an example of a COBRA election made on October 15, 2022, retroactive to October 1, 2022. The initial COBRA payment, covering premiums from October 2022 through July 2023 must be made no later than 45 days after July 10, 2023 (i.e., August 24, 2023), with subsequent payments due according to the regular COBRA timeline (the first day of each month of coverage, with a 30-day grace period).

In addition to COBRA deadlines, the end of the outbreak period also affects certain other plan-related deadlines, including those for claims and appeals and HIPAA special enrollments. The agencies have noted that nothing in the Code or ERISA prevents group health plans from continuing to extend deadlines and have encouraged plans to do so—at least for a while—as the outbreak period comes to an end. Keep in mind, however, that any extension beyond what is required should be cleared with plan insurers and stop-loss insurers, as applicable. For more information, see EBIA's COBRA manual at Section VI.D (“COVID-19: COBRA Election and Premium Payment Deadlines”).

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